



# **HINDU LAW & TAXATION OF HUF**

By

Dr. M.K.Bhatt,

M.Com, MBA, FCA, ACS, LLB, D.Hum

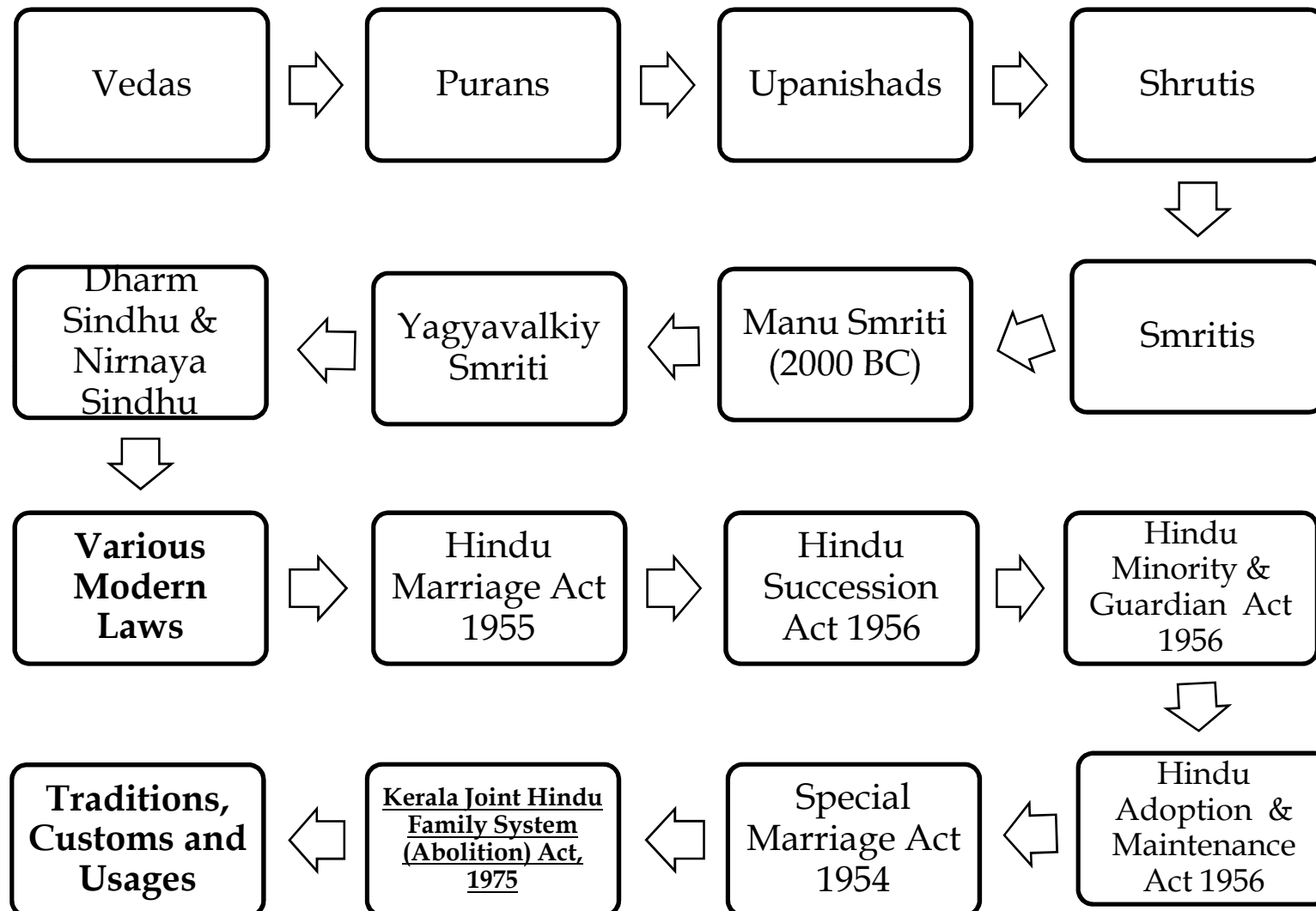


**Hindu Undivided Family ?**  
The expression of HUF  
must be constructed  
**in the sense in which**  
**it is understood** under the  
**Hindu Law**

Surjit Lal Chhabra v. CIT [1975] 101 ITR 776 (SC).



# Sources of Hindu Law?





# Basics

## Behind the Concept of HUF ?

- ▣ A Hindu is Never Born as an Individual
- ▣ A Hindu is Born and Joins other Members of His Family.
- ▣ HUF is a creature of Law and not of a contract i.e. HUF cannot be created by Act of parties.
- ▣ A Hindu remain Undivided with His Ancestors
- ▣ Separate and Distinct Taxable entity for the purpose of Income Tax & Wealth Tax.
- ▣ Income earned with the help of HUF FUNDS ?
- ▣ A Person can become member of a family only by Birth , Adoption or Marriage
- ▣ There may be smaller HUFs within a bigger HUF

## Basics

# Behind the Concept of HUF.....?

■ On 9th September 2005, section 6 of the Hindu Succession Act, 1956 was amended to provide that

- A daughter too could be a coparcener i.e. joint heir, like her brother to the joint family's assets.
- This is not extended further to next generations of such daughters.
- She too could enforce the partition of the family property.
- She continues to be the coparcener in her father's HUF even after she gets married and forms another HUF with her husband.
- So Gender bias has largely been taken out of the HUF laws.



# Some question after the amendment in section 6

- ▣ Whether she may Act as a Karta?
  - ▣ Still debatable but yes in my views till the marriage.
- ▣ Daughters married before 09-09-2005 would become coparceners of their parental family?
  - ▣ Carefully reading of amendment says “it applies only when in the joint family as on 09-09-2005, the female is the daughter of a coparcener.
  - ▣ It means both coparcener and daughter of such coparcener must be a member of such joint family as on the date.
- ▣ Where coparcener has expired prior to 09-09-2005, daughter of such coparcener may be treated as coparcener?
  - ▣ No, member of coparcenary ceased to be member of coparcenary on his death as per Ancient Hindu Law



# Some question after the amendment in section 6

- ▣ Whether the daughters who has become coparcener may challenge the alienation of any HUF property which has taken place before 20-12-2004?
  - No, plain reading of explanation says, this is applicable only in case decree. Hence oral and outside settlement may be challenged

# Terms used in the Concept of Taxation of HUF ?



## Karta?

**Eldest Major Coparcener**  
In the family

**Preferably Male**  
but Not always

Female may also act as Karta some times

Also called as Manager

## Coparceners?

**Distinct from the Members of a Hindu Family**

Includes **Male & Female Members**

May be Minor or Major **but Sapindi**

**includes Married Daughters**

## Relations?

**Sahodar?**

**Sapindi?**

Sakutumbi /Kunba)?

Sagotriya/ Agnate

Cognate?

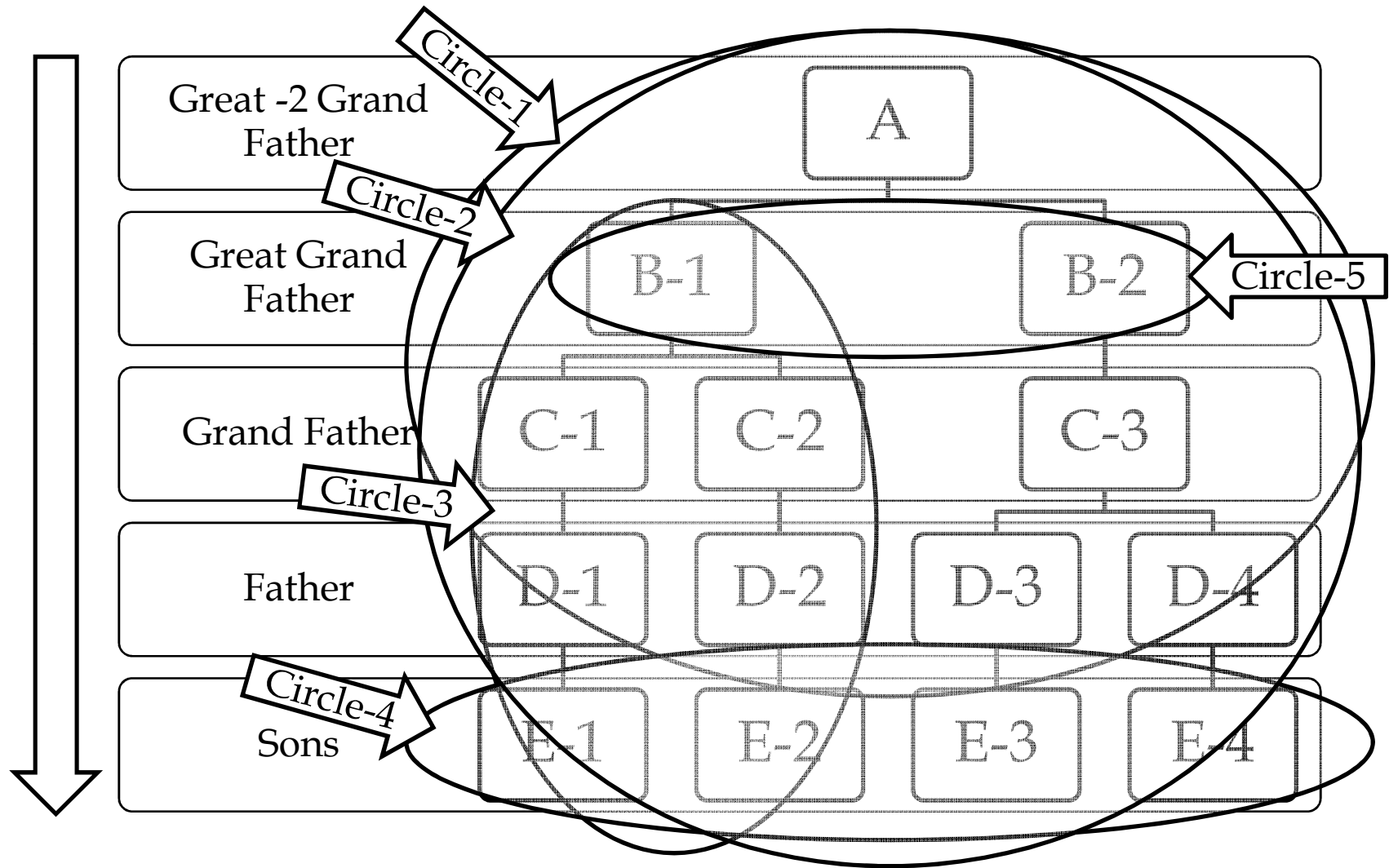
Full /Half/Uterine Blood

If they are Related by Blood or Adoption but not wholly through Males

Maatri Pakshy



# Terms used in the Concept of Taxation of HUF.....?



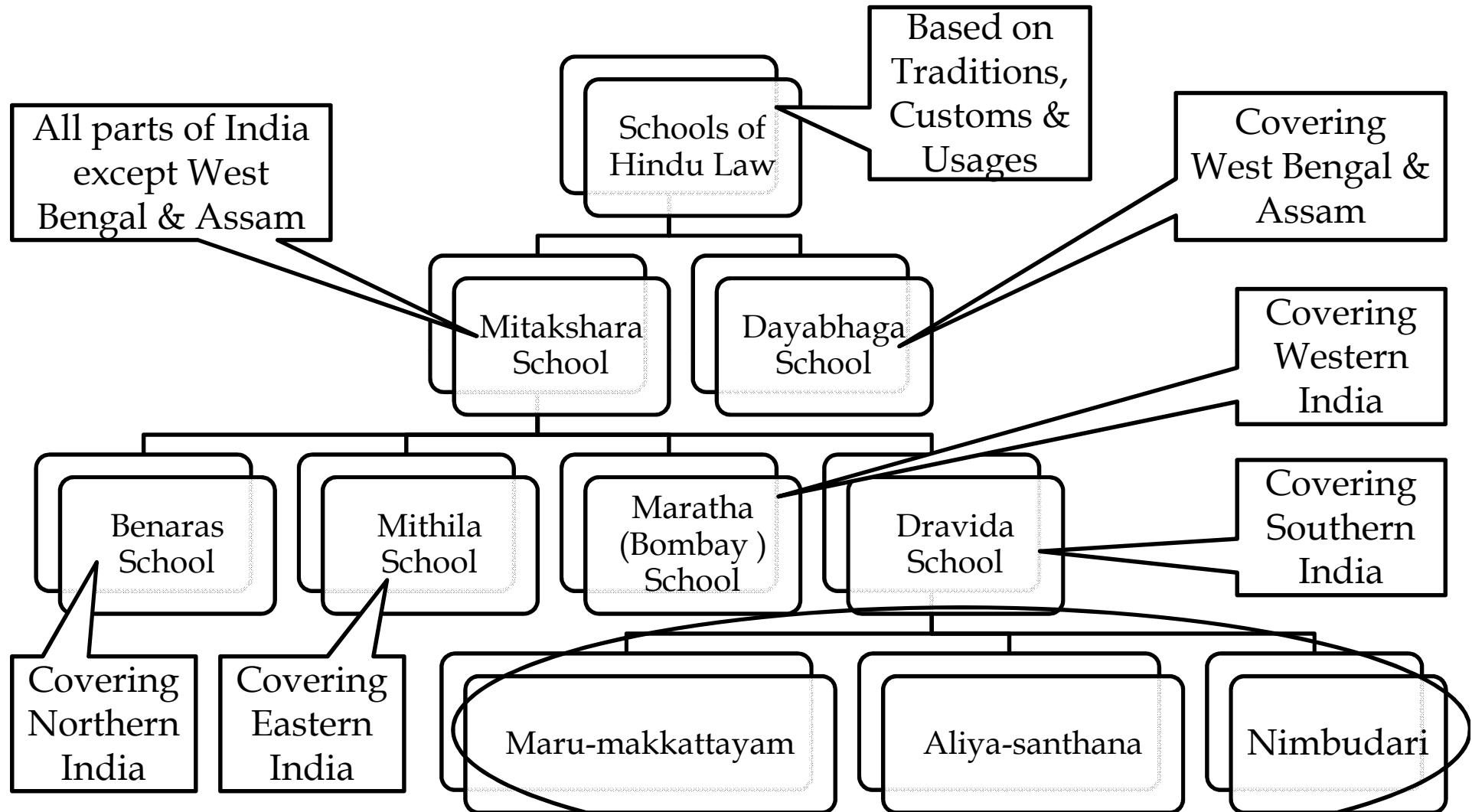
# Terms used in the Concept of Taxation of HUF.....?



	<b>Basis of Difference</b>	<b>Coparceners</b>	<b>Members</b>
1.	Interest in Family property	Acquires right by birth whether property is inherited or acquired by the family.	Interest lies in hands of the parents of the members , who may be coparceners
2.	Right to claim partition	May claim the partition	No right to claim the partition.
3.	Interest in the family property after the partition	Coparceners get the equal shares in the family property.	A mother or widow of the Karta takes a share equal to the sons. To maintain herself and Maintenance and Marriage of the unmarried daughters.



# Hindu Schools Governing HUF?





# Hindu Schools Governing HUF.....?

	Basis of Difference	Mitakshara	Dayabhaga
1.	Time of creation	<u>11<sup>th</sup> century</u>	<u>12<sup>th</sup> century</u>
2.	Compiled by	<u>Vijneshwara</u>	<u>Jimutavahana</u>
3.	Applicability	<u>All the parts of country</u> except state of West Bengal and Assam	Applicable <u>in some part</u> <u>of Assam &amp; West Bengal</u>
4.	Position of the Karta in the family	Karta acts as a <u>Manager</u> <u>or Trustee</u> In respect of the HUF property	Karta is the <u>Absolute</u> <u>Owner</u> and Possess the family property.
5.	Ownership of Property	<u>In the name of family</u> and not in any Member.	<u>Karta/Father is the</u> <u>absolute owner</u> & possess the family property.
6.	Rights of Sons/ daughters in the Family's properties	Sons/daughters get the right <u>by birth</u> as either coparcenar or members of the family.	Sons/daughters <u>do not</u> <u>get right by birth</u> as <u>No coparcener</u> till the <u>death of Father/Karta</u>



# Hindu Schools Governing HUF.....?

	<b>Basis of Difference</b>	<b>Mitakshara</b>	<b>Dayabhaga</b>
7.	<b>Right of Members in the property of family</b>	Every male (Female also w.e.f. 9-9-2005 ) member born in the family <u>Acquires interest by birth</u>	Sons & widows including daughters <u>As Co Heirs</u> by succession get the right over the family property <u>On the death of the father (Karta),</u>
8.	<b>Origin of coparcenary</b>	<u>Coparcenary birth and never may be denied</u>	<u>Coparcenary arise between brothers only</u>
9.	<b>Establishment of the system of HUF</b>	Every born Hindu will be deemed to have HUF	<u>They cannot be treated as HUF</u> <u>Unless they decide to live in a Joint Family .</u>
10.	<b>Distinction between family property and self acquired property</b>	Family properties and individual self acquired properties <u>may be kept separately.</u>	This system <u>does distinguish between join property &amp; self acquired property.</u>



# Hindu Schools Governing HUF.....?

	Basis of Difference	Mitakshara	Dayabhaga
11.	<b>Coparceners Unity</b> • <u>Of ownership &amp;</u> • <u>Of possession.</u>	There is a unity • <u>In the ownership but</u> • <u>No unity in possession.</u>	There is a unity • <u>Of possession but</u> • <u>No unity of ownership</u>
12.	<b>Interest of coparceners in Family Property</b>	Fluctuates by birth and deaths in the family	Its <b>fixed and does not fluctuate</b> by birth or death
13.	<b>Claim of partition in the properties of the family</b>	•Coparcenary is entitled to have the partition. • <u>Members &amp; females have a right of maintenance from the family.</u>	• <u>Sons /daughters does not enjoy the right to demand the partition till the death of father</u> •As no coparcenarship exist in this system
14.	<b>Determination of shares on the partition is on survivorship?</b>	Determination of share in the properties on the basis of survivorship.	<u>Survivorship is not essential.</u> Every coparcenar takes a definite share in such property



# Hindu Schools Governing HUF.....?

	Basis of Difference	Mitakshara	Dayabhaga
15.	Nature of ownership of the Family properties.	<u>Collective ownership</u> and owned by the Family and not by coparceners or members.	<u>He or She is the owner of that share.</u> Even before partition, a coparcener is entitled to particular share.



# Hindu Schools Governing HUF.....?

## Judicial Pronouncements?

- ▣ **Provision of the Income Tax Act applies to both schools of Hindu law**
  - Where Dayabhaga school is silent,
  - Provisions of the Mitakshra school will prevail.
    - ▣ Udayan Chinubhai (HUF) v. CIT [1967] 63 ITR 416 (SC).
- ▣ **Position in Kerala**
  - With effect from 1-12-1976, No assessment of Income in status of HUF in Kerala.
  - Once the Kerala Joint Hindu Family System (Abolition) Act, 1975 has been came into existence.
    - ▣ CIT v. N. Ramanatha Reddiar (HUF) [1996] 222 ITR 765 (SC).
    - ▣ CIT v. N. Krishna Iyer (HUF) (No. 1) [1991] 187 ITR 634 (Kerala)



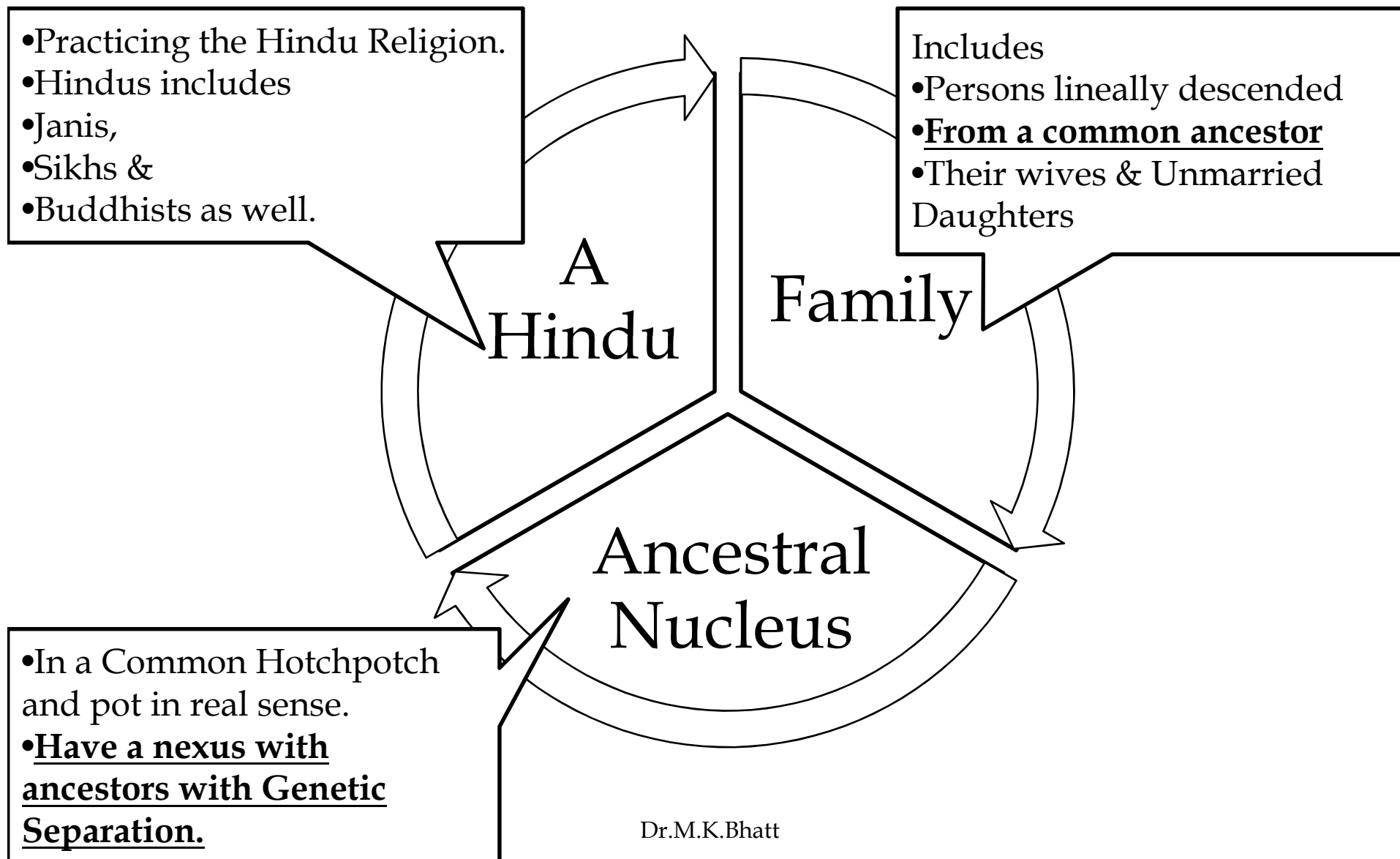


# Hindu Schools Governing HUF.....?

- ▣ **Kerala Joint Hindu Family System (Abolition) Act, 1975 cannot be applied to persons outside Kerala**
  - For the application of the Act, primary conditions are:
    - ▣ The family must be permanently domiciled in the state of Kerala.
    - ▣ No migration from the state of Kerala, of permanent nature of any of the member/coparcenar.
    - ▣ All sources of income must be within the state.  
(Management and control)
    - ▣ CIT v. D.K. Nambudripad [2002] **253 ITR 601** (Madras)



# Main Ingredients of HUF ?





# Meaning of A Hindu?

- ▣ The Persons to whom Hindu Law Applies?
  - ✓ ■ Hindu by Birth as well Hindu by Convention
  - ✓ ■ Illegitimate Children where both parents are Hindus
    - Children of Mixed Marriages?
      - ▣ Illegitimate Children where one parent is Hindu and another parent is Non Hindu but
      - ✓ ▣ Children are bought up as Hindu.
  - ✓ ■ Jains, Sikhs, Buddhists, Namudari & Lingayats are Hindu.
  - ✓ ■ A Hindu by birth who having **Renounced Hinduism** has reverted to it
  - ✓ ■ Sons of Dancing Girls (**Deva Dasis**)
  - ✓ ■ Hindus who makes a declaration that **they are Hindus for the purpose of Special Marriage Act.**



# Meaning of A Hindu.....?

Judicial pronouncements?

- ▣ For the determination of a person as HINDU, Only **Hindu law** should apply
  - ▣ CWT v. Smt. Champa Kumari Singhi [1972] **83 ITR 720** (SC)
- ▣ **All Schools of Hindu Law** are covered
  - ▣ CWT v. Smt. Champa Kumari Singhi [1972] **83 ITR 720** (SC)
  - ▣ C. Krishna Prasad v. CIT [1974] **97 ITR 493** (SC).
- ▣ Hindu law **applies to Jains**
  - ▣ Seth Nathusa Pasusa Ltd. v. CIT 7 ITC 129 (Nagpur)
  - ▣ Nathu Sao v. CIT [1934] **2 ITR 463** (Nagpur).
- ▣ **Hindu law does not apply to Cutchi Memons**
  - ▣ Hajee Abdulla Sait v. CIT [1989] **177 ITR 71** (Karnataka).



# Meaning of A Hindu.....?

- ▣ Declaration under Special Marriages Act is not relevant
  - A Hindu who declares, for the purposes of the Special Marriage Act, 1872, that **he does not profess the Hindu religion does not cease to be a Hindu.**
  - Accordingly, the male issue of such a Hindu acquires an interest by birth in the father's ancestral properties.
    - ▣ CIT v. Partap Chand [1959] 36 ITR 262 (Punjab).
- ▣ Same person can be taxed separately as individual and HUF
  - The individual and the HUF are totally different units of taxation; they are two different Assessees
    - ▣ CIT v. Rameshwarlal Sanwarmal [1971] 82 ITR 628 (SC).



# Meaning of A Hindu Family?

- ▣ Child brought up as a Hindu, is a Hindu
  - Any child, **Legitimate or Illegitimate**, one of whose parents is a Hindu by religion and who is brought up as a Hindu, is a Hindu
    - ▣ CWT v. Late R. Sridharan [1976] 104 ITR 436 (SC).
- ▣ Hindu marrying Christian, and **bringing up daughter as Christian**, cannot claim HUF status
  - Because for claiming said status **it is necessary that the child must be brought up as member of the HINDU family** to which the Hindu parent belongs,
  - Namely, the family of the Hindu parents and brothers, etc.,
  - In that context only the requirement as to the child being brought up as a Hindu arises
    - ▣ Addl. CIT v. G. Venkataraman [1977] 109 ITR 247 (Madras).



# HUF Property?

- ▣ Generally Recognised Properties as **Coparcenary Property** (Movable and Immovable): includes
  - **Ancestral property**
  - Property **allotted on partition**
  - Property **jointly acquired by coparceners for Hindu undivided family (HUF). Distinct from Joint property.**
  - Property acquired **with the aid of coparcenary property**
  - Separate property of a coparcener **thrown by him into family hotch pot and treated as coparcenary property.**



# HUF Property.....?

- ▣ In C. Krishna Prasad v. CIT (1974) 97 ITR 493 (SC)
  - There is a distinction between a coparcener & a member of a joint family.
  - A coparcener no doubt is a member but all members need not be coparceners.
  - Property obtained by a coparcener at a partition in a larger HUF is ancestral property in his hands.
  - Such an ancestral property
    - ▣ May be disposed of by the sole coparcener
    - ▣ Because of the peculiarity of the circumstance.
  - There is no one else to question the alienation or to claim a share in the property at that time of disposal.





# HUF Property.....?

- ▣ There is a **Distinction between two sets of cases** :
  - ▣ A property which was not originally joint
    - But due to certain circumstances, acquire the character of a joint family property
    - For example as **in the case of blending**; and
  - ▣ A property which is already impressed with the character of joint family property
    - coming into the hands of a person as a single coparcener .
    - Bharath Kumar D. Bhatia v. CIT (1993) **199 ITR** (Karnataka)
- ▣ Gift of self-acquired properties by father to sons will be HUF property in sons' hands **only if cumulative benefit is intended**
  - ▣ M.R.M. Ramaswamy Chettiar v. CWT [1975] **99 ITR 1** (SC).



# HUF Property.....?

- ▣ Property given by a female to her son for benefit of family?
  - Would constitute joint family properties in assessee's hands
    - ▣ CIT v. K. Satyendra Kumar [1998] 232 ITR 360 (SC)
- ▣ Gifts to HUF
  - It is wrong to say that a HUF cannot receive gifts
    - ▣ Sukhlal Bhanwarlal (HUF) v. CIT [1997] 226 ITR 513 (MP)
- ▣ Burden of proof is on Assessee
  - The person who asserts that a property is joint family property, has to prove that it is so .
    - ▣ Anil Kumar Roy Chowdhury v. CIT [1976] 102 ITR 12 (SC).
- ▣ Stridhan is an absolute property of Female Member who received it
- ▣ Stridhan meaning mostly & commonly Movable Assets includes Jewellery



# HUF Property.....?

## ▣ Difference between Dowry & Stridhan

### ■ Dowry

- ▣ that she can share it with her husband or the rest of the family by exercising her discretion.

### ■ Stridhan includes

- ▣ whatever property the bride receives as Gifts before the Nuptial fire.
- ▣ Stays under her control in the matrimonial home.
- ▣ Gifts made at the bridal procession, i.e. while the bride is being led from her residence of her parents to that of her husband.
- ▣ Gifts made in token of love, that is, those made by her father-in-law and mother-in-law and those made at the time of the bride making obeisance at the feet of elders.
- ▣ Gifts made by the Father, Mother and Brother of the bride.
  - Pratibha Rani v. Suraj Kumar [1985] 155 ITR 190 (SC)



# HUF Property.....?

- ▣ The family hotchpot can be an empty one –
  - Even an empty hotchpot can receive and hold any property that is thrown into it by the coparcener .
    - ▣ CIT v. S. Sivaprakasa Mudaliar [1983] 144 ITR 285 (Madras)
- ▣ Interest in a trust can be blended with HUF property
  - ▣ CIT v. Gopaldas T. Agarwal [1979] 116 ITR 613 (Bombay)
- ▣ Possession of ancestral property is not a pre-condition for blending
  - ▣ Damodar Krishnaji Nirgude v. CIT [1962] 46 ITR 1252 (Bombay).
- ▣ The 3 Essential Pre-conditions for applying the Doctrine of blending, (togetherness), namely :
  - (i) Existence of a coparcenary;
  - (ii) Existence of coparcenary property; and
  - (iii) Existence of separate property of a coparcener
    - ▣ CIT v. Polaki Butchi Babu [1988] 174 ITR 430 (Orissa).

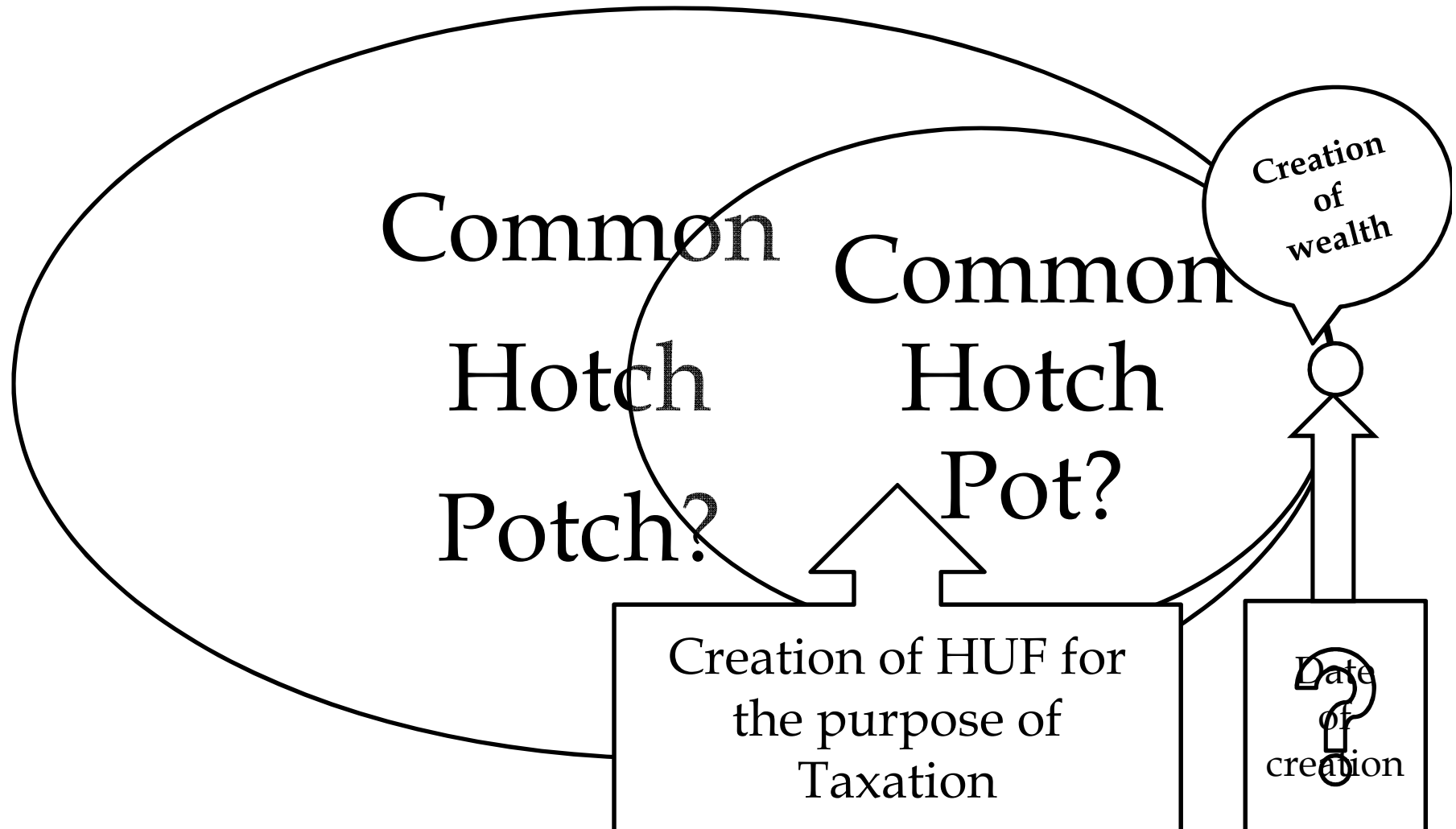


# HUF Property.....?

- ▣ Self-acquisition should be without any aid/ assistance from the ancestral /Joint family property
  - ▣ V.D. Dhanwatey v. CIT [1968] 68 ITR 365 (SC)
  - ▣ S. Bhagwant Singh v. CIT [1960] 38 ITR 436 (Punjab) (DB).
- ▣ No legal formality is necessary for blending
  - ▣ CIT v. S. Sivaprakasa Mudaliar [1983] 144 ITR 285 (Madras.).
- ▣ No registered instrument is necessary for blending
  - ▣ CIT v. Kanhaiya Lal [1970] 75 ITR 702 (Allahabad).
- ▣ Consent of other members is not necessary for blending
  - ▣ CIT v. A. Krishna Murthy [1978] 113 ITR 133 (AP).



# Creation of HUF ?





# Creation of HUF.....?

- ▣ To form an HUF, one have to **Get Married**.
  - The moment a person gets married, The New HUF indisputably comes into existence.
  - (Social recognition of HUF)
- ▣ Formation of HUF for taxation mean formation of Capital,
  - Transfer money by gifts etc to HUF capital.
  - Precautions for the clubbing provisions and tax on gifts under Income Tax Act,
  - There is no Tax on Gifts in kind though they may attract clubbing provisions in some cases.
- ▣ HUF should have opened a Bank Account
  - Not must but it is advisable so that we can have transaction by cheques .
- ▣ Apply for Permanent Account Number (PAN)



# Creation of HUF.....?

Judicial pronouncements?

- ▣ The common Hotch Pot can be filled and the dormant HUF can be activated by
  - Blending Individual Property
    - ▣ Which is now hit by clubbing provisions of section 64
  - Gifts may be from an outsider
    - ▣ Pushpa Devi vs CIT (1977) 109 ITR 730 (SC)
- ▣ **Existence of male member is not essential**
  - Even after the death of the sole male member,
    - ▣ CIT v. RM. AR. AR. Veerappa Chettiar [1970] 76 ITR 467 (SC)





# Creation of HUF.....?

- ▣ Single person cannot constitute HUF
  - Under Hindu law a joint family may consist of a single male member and widows of deceased male members
  - The word 'family' always signifies a group.
  - **Plurality of persons is an essential attribute of a family.**
    - ▣ C. Krishna Prasad v. CIT [1974] **97 ITR 493** (SC)
    - ▣ CIT v. Ved Parkash [1982] **136 ITR 238** (Punjab & Haryana)
    - ▣ Surjit Lal Chhabda v. CIT [1975] **101 ITR 776** (SC).
  
- ▣ **Two male members are not necessary**
  - Single male member with widows of deceased coparceners can be HUF
    - ▣ Gowli Buddanna v. CIT [1966] **60 ITR 293** (SC)



# Creation of HUF.....?

- ▣ Female Members
  - Hindu personal law requires presence of a male for purpose of constitution of an HUF and
  - Female heirs of a Hindu, governed by Dayabhaga School of Hindu Law, dying intestate, cannot form joint Hindu family by means of agreement by throwing therein interest of any one of them in inherited property and,
  - Therefore, share of properties inherited by such female heirs from her husband, dying intestate, will be assessable in their hands in status of individuals
    - ▣ CIT v. Smt. Sandhya Rani Dutta [2001] 248 ITR 201 (SC)



# Creation of HUF.....?

- ▣ Single male member, after marriage can form HUF
  - ▣ CIT v. A. K. Jhunjhunwalla & Sons [1997] 223 ITR 45 (Gauhati).
- ▣ Unmarried daughter continues to be a member
  - The daughter too, on her birth, became a sapindi and until she leaves the family by marriage, the tie of Sapindaship will bind her to the family of her birth
    - ▣ Surjit Lal Chhabda v. CIT [1975] 101 ITR 776 (SC)
    - ▣ CGT v. B.K. Sampangiram [1986] 160 ITR 188 (Karnataka.)
- ▣ Male member with wife & unmarried daughter can form HUF after the separation from his father/brothers
  - ▣ Surjit Lal Chhabda v. CIT [1975] 101 ITR 776 (SC).



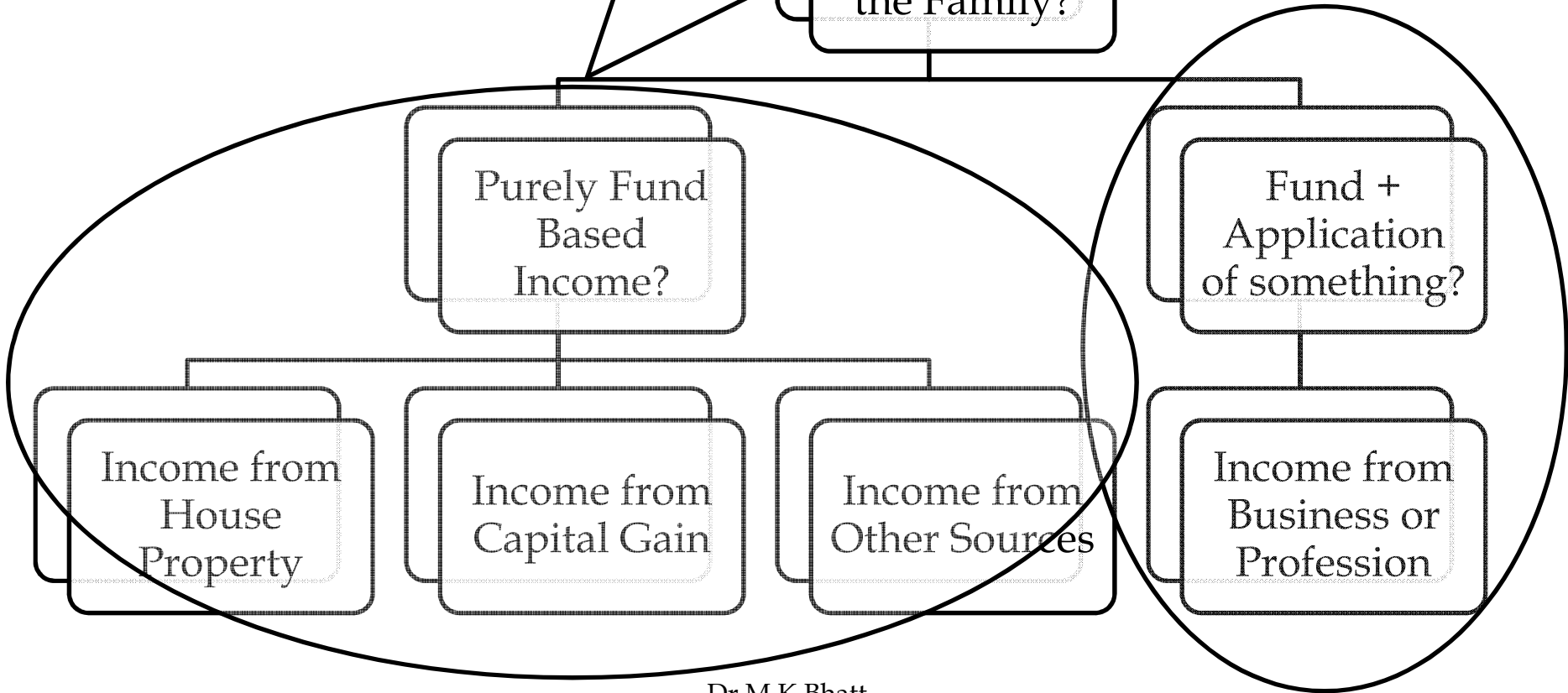
# HUF & Jointness ?

- ▣ Basic concept of Jointness applies to all schools
  - A joint Hindu family under the Dayabhaga is, like a Mitakshara family, **normally joint in food, worship & estate.**
  - In both systems, the property of the joint family may consist of ancestral property, joint acquisitions and of self-acquisitions thrown into the common stock.
    - ▣ Surjit Lal Chhabda v. CIT [1975] **101 ITR 776** (SC)
    - ▣ CIT v. P.N. Talukdar (1982) **135 ITR 628** (Calcutta)
    - ▣ T. Ram Dulari v. CIT [1984] **150 ITR 569** (Delhi)
- ▣ Existence of property or multiple members is not a pre-requisite
  - This Jointness is understood in terms of faith and food. This is because a Hindu is born as a member of the joint family.
    - ▣ CIT v. P.N. Srinivasa Rao [1997] **93 Taxman 81** (Kernataka).

# Income of HUF ?

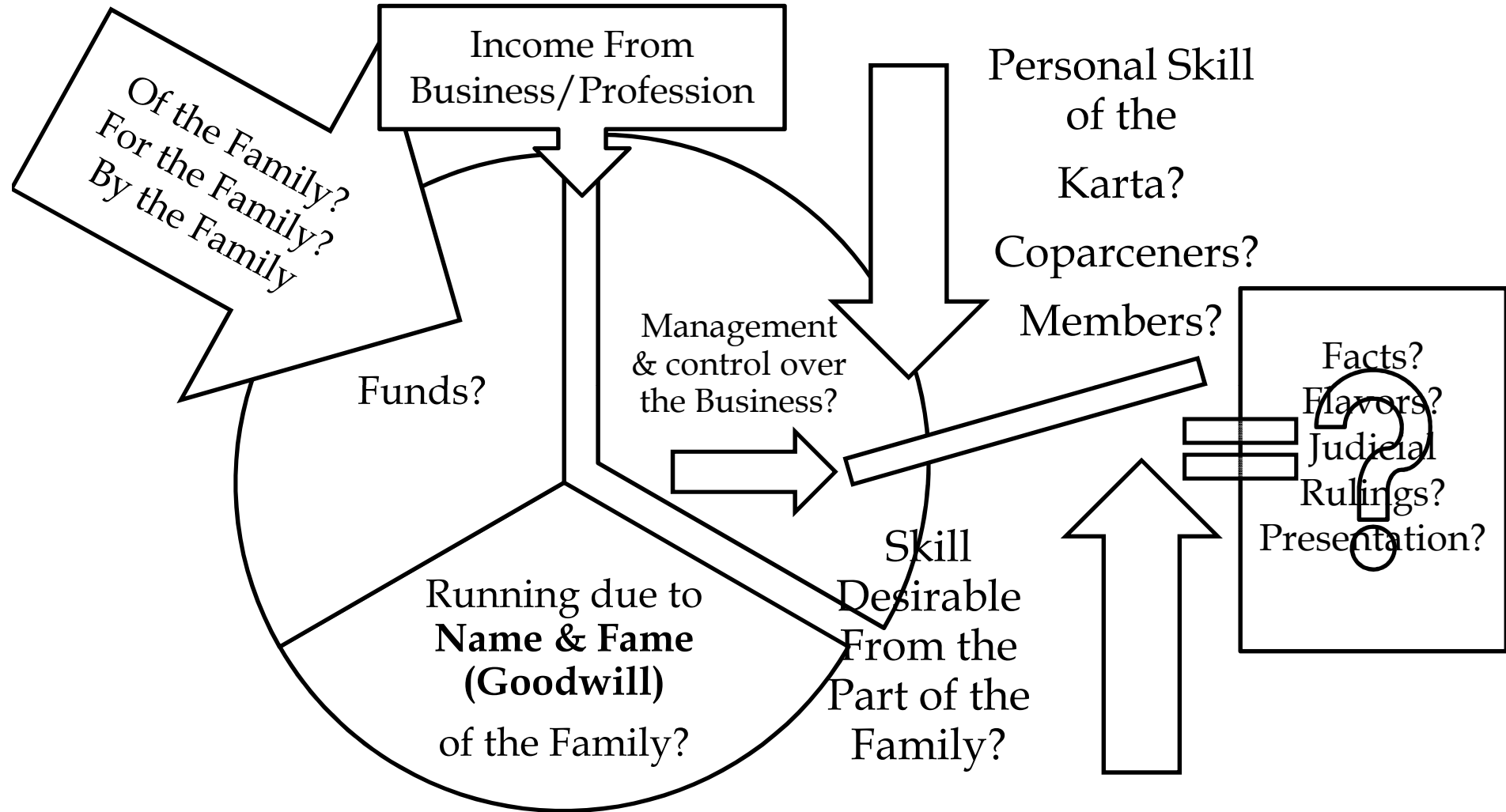
*Precondition to determine the Income of HUF*

Deployment of Funds of the Family?





# Income of HUF.....?





# Income of HUF.....?

Judicial pronouncements?

- ▣ HUF business and conversion into Partnership?
  - For conversion of family business into partnership, partition is a pre-requisite
  - There has to be a division between the coparceners qua the joint family business, although it is not necessary to disrupt the HUF as a whole.
  - The Hindu law or the Act does not impose Any disability upon the members of a HUF in the matter of entering into a contract inter se.



# Income of HUF.....?

- But it is well-settled that before entering into such partnership, the prerequisite is the partition of that joint family asset which is sought to be introduced as capital of the partnership so that it acquires the character of a separate property.
- Where there was no such partition, and the entire capital of the business of the HUF was treated as the capital of one partner and none of the other partners contributed any capital in the firm, no partnership could be said to have come into existence for purposes of assessment of income
  - Kalu Ram & Co. v. CIT [2002] **254 ITR 307** (Delhi).





# Income of HUF.....?

- ▣ Business and HUF?
  - HUF may carry business as Proprietor
    - ▣ if not linked with to some professional expertise or skill or personal efforts without any detriment to the funds invested by the HUF .
  - HUF can join the Partnership firm as a partner
    - ▣ through its Karta or any other Members.
  - No prohibition in law to be a Partner in a Firm in the Individual capacity and in a capacity of Karta of HUF provided firm consist of 3 partners.
    - ▣ Income of Wife / Minor child of Karta from the partnership firm in which HUF is partner through the Karta will not attract the provisions of clubbing under section 64(1)(i)
    - ▣ Interest paid to the Individual by the partnership firm in which HUF is partner through the Karta will not be disallowed under section 40(b)



# Income of HUF.....?

- Remuneration received by a Karta/Member if an HUF from the Partnership firm representing HUF through the Karta, will be the Income of HUF
  - If not linked with to some professional expertise or skill or personal efforts without any detriment to the funds invested by the HUF.
  - If there is a Valid Agreement between the family members and payment is proved to be for specific services rendered by Karta to the family for looking after its Business.
- Assets of the HUF cannot have an attachment by TRO in case any member of the HUF including Karta in his individual capacity is found to be Assessee in Default
  - *Praksh Chand Lunia vs TRO(2000)* **153 Tax man 87** (Rajasthan)



# Income of HUF.....?

- ▣ Sub-letting of a contract by Assessee-HUF to its Karta in his individual capacity
  - The Assessing Officer would not be justified in assessing the income from the contract in the hands of the HUF.
  - One person can be assessed in dual capacity, i.e., one as Karta of HUF and another as in his individual capacity,
  - when one person has dual personality under the Income-tax Act. specially when the income had not escaped as the contract given to individual could not be said to be a sham transaction, there was no tax evasion in this case
    - ▣ V.P. Toshniwal v. CIT [2006] 156 Taxman 337 (Rajasthan).



# Income of HUF.....?

- ▣ Income of member from Firm/Company is assessable as HUF's income, only if it was earned by detriment to family funds
  - Income Received by a member of a HUF from a firm or a company in which the funds of the HUF are invested, even though the income may be partially traceable to personal exertion of the member, is taxable as the income of the HUF,
  - If it is earned by detriment to the family funds or with the aid or assistance of those funds; otherwise it is taxable as the member's separate income
    - ▣ P.N. Krishna Iyer v. CIT [1969] 73 ITR 539 (SC).



# Income of HUF.....?

- ▣ Karta/Member's Remuneration and Share of Profits from Firm
  - Principles to be applied -
    - (i) whether the income received by a coparcener of a HUF as remuneration had any real connection with the investment of the joint family funds;
    - (ii) whether the income received was directly related to any utilisation of family assets;
    - (iii) whether the family had suffered any detriment in the process of realization of the income; and
    - (iv) whether the income was received with the aid and assistance of the family funds.



# Income of HUF.....?

- From these subsidiary principles, the broader principle that emerges is
  - whether the remuneration received by the coparcener in substance, though not in form, was not one of the modes of return made to the family
  - because of the
    - Investment of the family funds in the business or
    - whether it was a compensation made for the services rendered by the individual coparcener
- If it is the former, it is an income of the HUF but if it is the latter, then it is the income of the individual coparcener
  - Raj Kumar Singh Hukam Chandji v. CIT [1970] 78 ITR 33 (SC).



# Income of HUF.....?

- ▣ Share of Profits from firm is assessable in HUF's hands, if capital had come out of HUF funds
  - Whether in entering into a partnership with outsider,
    - ▣ The Karta acted in his individual capacity and for his own benefit, or
    - ▣ He did so as representing his joint family and for its benefit,
    - ▣ It is a question of fact.
  - If for the purpose of contribution of his share of the capital in the firm
    - ▣ The Karta brought in money out of the HUF's funds, then he must be regarded as having entered into the partnership for the benefit of the HUF
      - CIT v. Kalu Babu Lal Chand [1959] 37 ITR 123 (SC).



# Income of HUF.....?

- ▣ Remuneration/Profits must have been earned with the help of Joint Family Assets
  - The question whether
    - ▣ the amount received by the Karta by way of managing director's remuneration in the one case or
    - ▣ As his share of profits in the partnership business in the other case
  - Is his personal income or is the income of his HUF ?
  - Such question can arise only as between the Karta and the members of his family and
  - The answer to the question will depend on
    - ▣ whether the remuneration or profit was earned with the help of joint family assets
      - CIT v. Kalu Babu Lal Chand [1959] 37 ITR 123 (SC).





# Income of HUF.....?

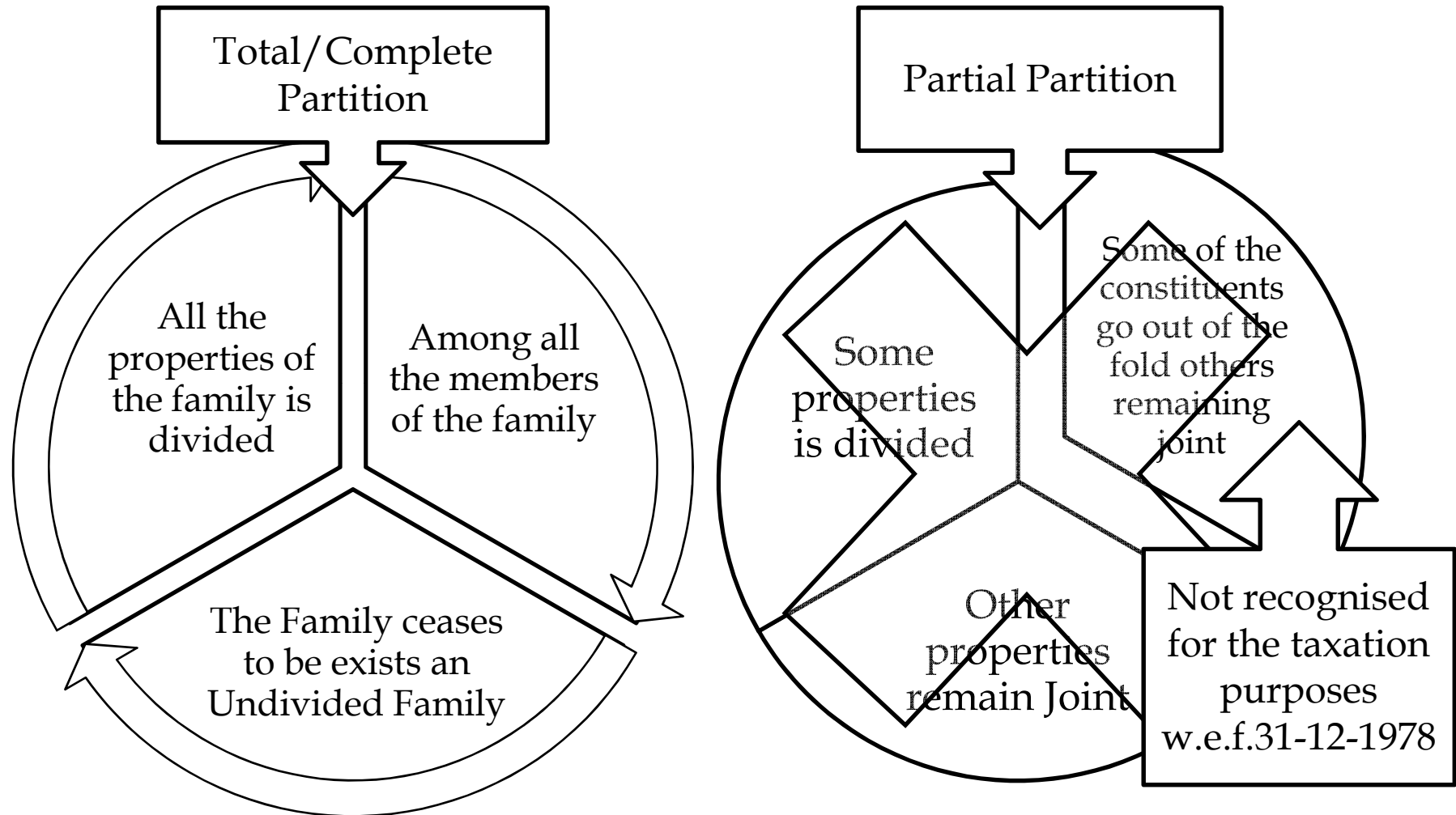
- ▣ Remuneration and commission received by the Karta of HUF
  - On account of his personal qualifications / exertions and not on account of investment of family funds in company and therefore, could not be treated as income of HUF and
  - since Tribunal is final fact finding authority, High Court was not correct in holding that income was to be treated as HUF's income
    - ▣ K.S. Subbiah Pillai v. CIT [1999] 237 ITR 11 (SC).
- ▣ Salary received as MLC is individual income
  - ▣ CIT v. Maharaja Chintamani Saran Nath Sahdeo [1982] 133 ITR 668 (Patna).



# Income of HUF.....?

- ▣ Salary received by HUF member from firm managed by him is his individual income
  - The law is well settled that if a member of a HUF joins a partnership and
  - He is given a salary for managing the firm or for rendering special services to the firm, the salary will be his individual income
    - ▣ CIT v. Trilok Nath Mehrotra [1998] 231 ITR 278 (SC).
- ▣ Merely because a member of a HUF becomes a partner in a firm as representing the family.
  - Everything that he receives cannot be treated as the income of the family.
  - In the absence of a finding that income which was received by the member was directly related to any assets of the family utilized in the partnership, the income cannot be treated as the income of the HUF.
    - ▣ CIT v. Gurunath V. Dhakappa [1969] 72 ITR 192 (SC).

# Partition of HUF ?





# Partition of HUF.....?

- ▣ Persons entitled to claim partitions?
  - All coparceners
  - Mother is entitled to a share equal to the share of a son in case of death of the father.
  - Wife gets a share equal to that of a son if a partition takes place between her husband and his sons. She enjoys the share separately
  - A son in the womb of the mother at the time of the partition
- ▣ Allotment of share on Partition?
  - On a partition of an HUF (Consist of Father, Mother & Sons)
    - ▣ Mother have no right to claim a partition,
    - ▣ But after the partition, she takes a share equal to Her Sons
  - On the partition of an HUF (Consist of Father & Sons, Mother is not alive)
    - ▣ Each son will take a equal share that of the father
  - On the partition of an HUF (Consist of Brothers only)
    - ▣ Each brother will take a equal share.



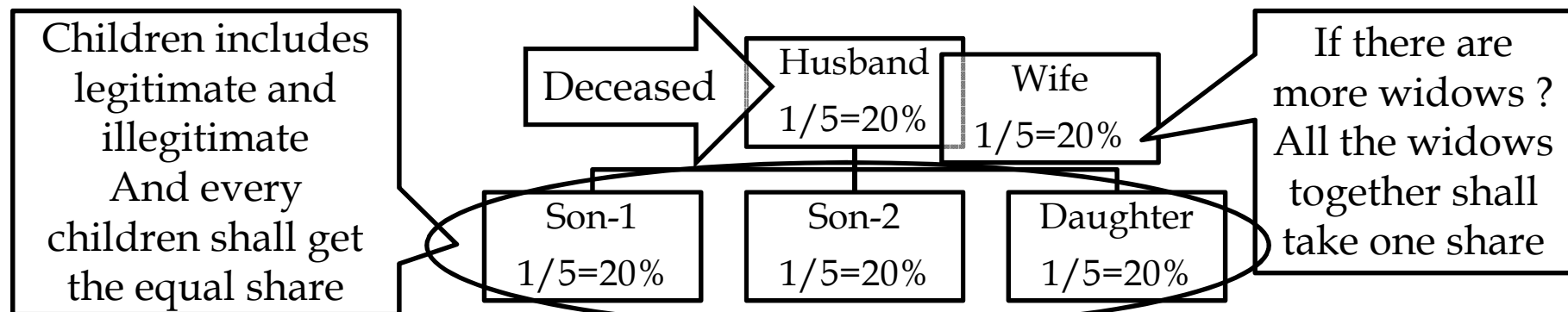
# Partition of HUF.....?

- ▣ The Hindu Succession Act 1956 ? Section 6
  - Succession by survivorship
    - ▣ Applicable only in case of Mitakshara school
  - Sole surviving coparcenar
    - ▣ If a Hindu male at the time of his death was the sole surviving coparcenar of the HUF,
    - ▣ The succession shall be as per the provisions of section 8
    - ▣ As section 6 only contemplates a coparcenary of more than one coparcenar
  - Succession and share in the Joint Estate
    - ▣ Deceased may if he so desires, indicate through the WILL as to how his interest in the coparcenary in HUF should be devolve upon his heirs
    - ▣ In case so as such WILL, then the interest of the deceased shall be devolve in the manner below



# Partition of HUF.....?

- Quantification of Interest of a deceased coparcener in coparcenary property
  - Share which the deceased would have got, had the partition taken place in the family immediately before the Death
  - In case of the following, share at the time of partition before the death of the Husband shall be as follows;

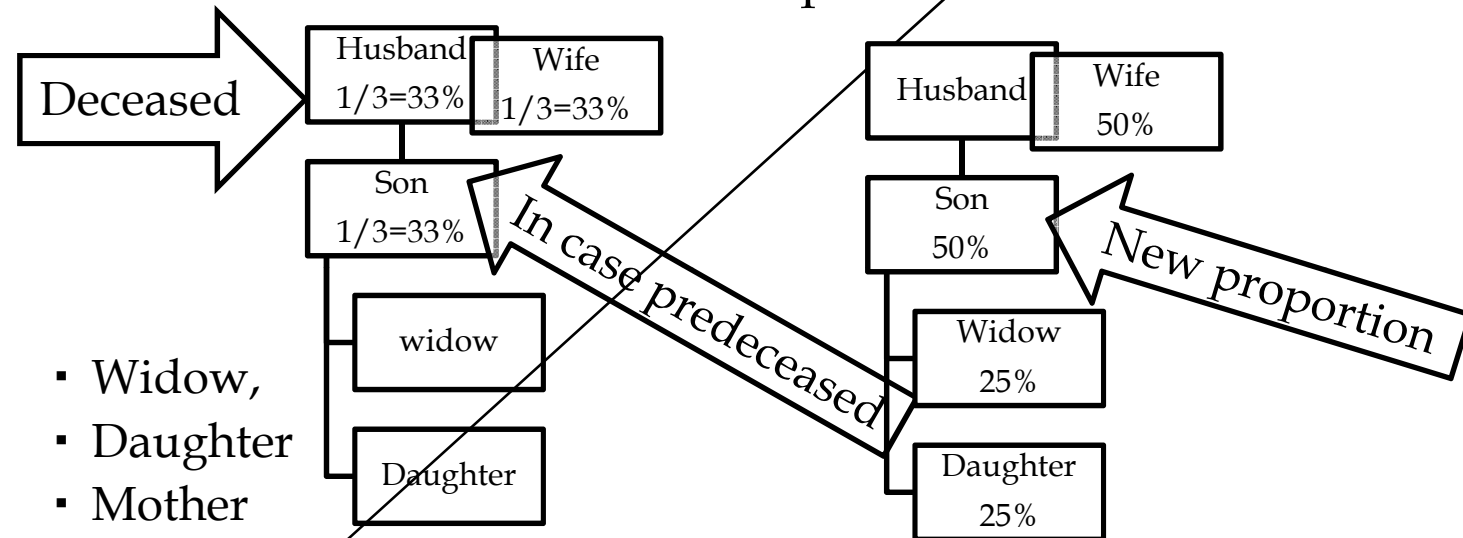


- After the death of the Husband , the share of the Husband in the coparcenary property shall be distributed to all the coparceners i.e.  $20\%/4=5\%$  shall be added in the share of all the remaining coparceners i.e.  $20\%+5\%=25\%$



# Partition of HUF.....?

- Succession by survivorship not applicable where deceased leaved behind a Female Heir except One:

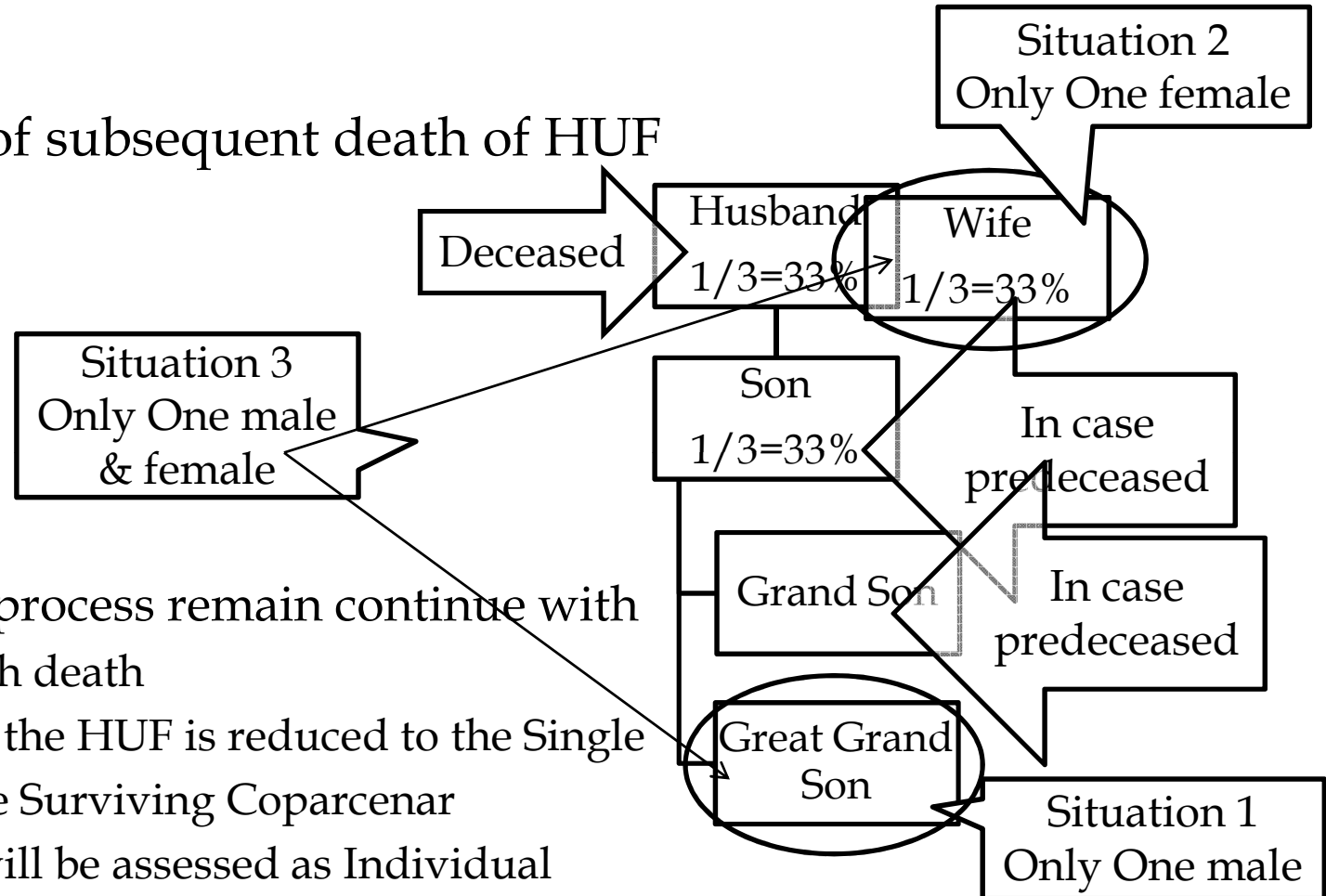


- Widow,
- Daughter
- Mother
- Widow of a predeceased son
- Daughter of a predeceased son
- Daughter of a predeceased daughter
- Son of a predeceased daughter
- Daughter of a predeceased son of a predeceased son
- Widow of a predeceased son of a predeceased son



# Partition of HUF.....?

- Effect of subsequent death of HUF



- This process remain continue with

- Each death
- Till the HUF is reduced to the Single Sole Surviving Coparcenar
- It will be assessed as Individual

if not married, the status may be revered in case such individual get married

- Prem Kmar vs CIT(1980) 121 ITR 347 (Allahabad)

- Bharat Kumar D. Bhatia vs CIT (1993) 199 ITR 190 (Karnataka)

Dr.M.K.Bhatt





# Partition of HUF.....?

- Succession of separate and self acquired property of a Hindu Male (Section 8)
  - Property shall be devolved in the following order

On the relations specified in CLASS- I of the schedule



If there is no Relative in Class I,  
then upon the relative specified in CLASS- II



If there is no Relative in Class I and Class II,  
then upon the AGNETS of the deceased



If there are no agnates,  
then upon the COGNATES of the deceased

**Sakutumbi**  
Related to Father by  
blood or adoption  
through the male

Related by blood or  
adoption but not wholly  
through males



# Partition of HUF.....?

- Succession of separate and self acquired property of a Hindu female (Section 15)
  - Property shall be devolved in the following order

Upon the Sons / Daughters (including the children of any pre deceased son or daughter and the husband

**Full blood is preferred over the half blood relatives**



Upon the Heirs of the Husband

**Brother of the Deceased is preferred over Nephew**



Upon the Mother and Father

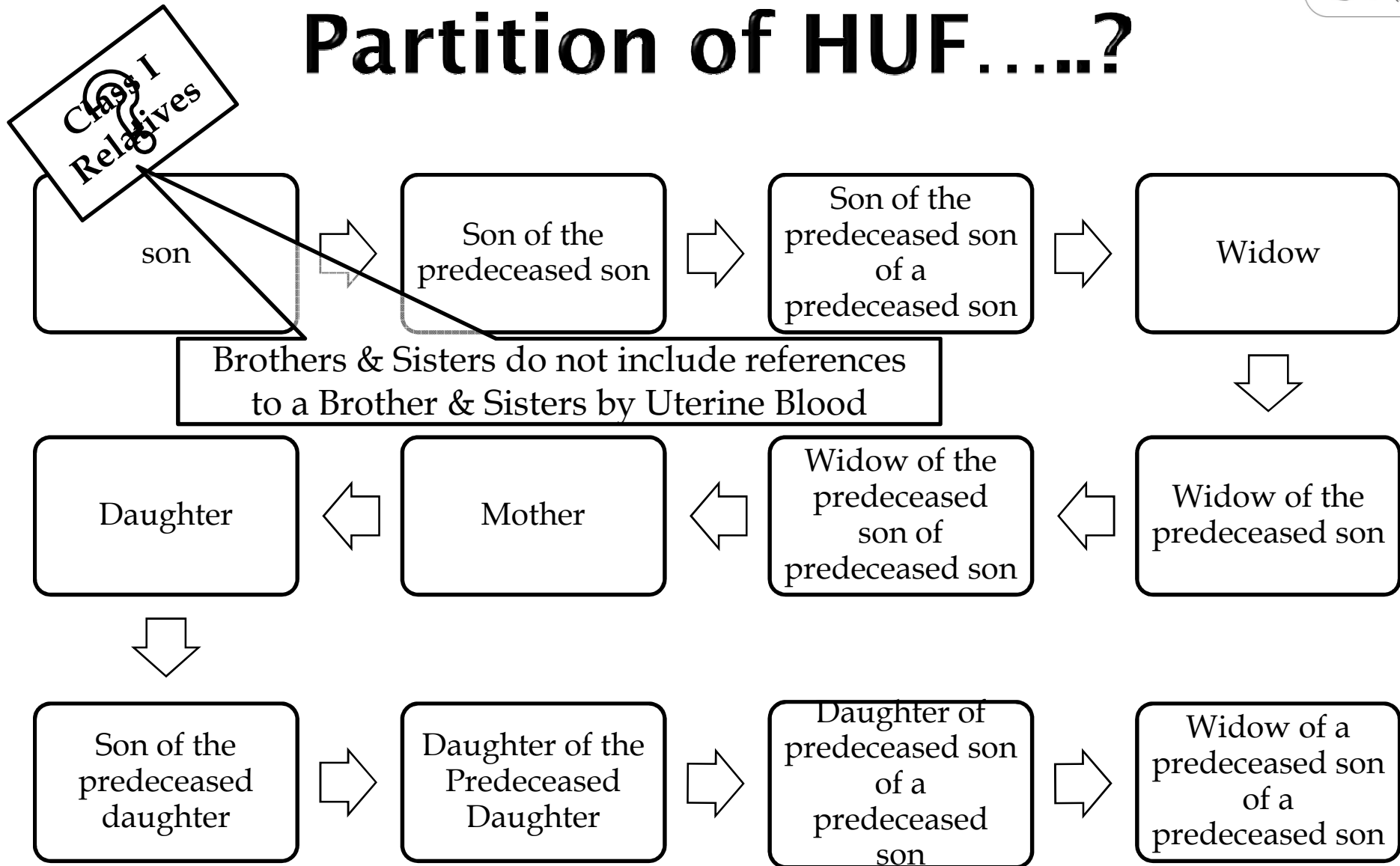


Upon the Heirs of the father and then heirs of the mother

~~Section 25:  
Murderer Disqualified  
Section 26:  
Convert's descendants  
Disqualified  
Section 28:  
Disease, Defects etc not to  
Disqualify~~

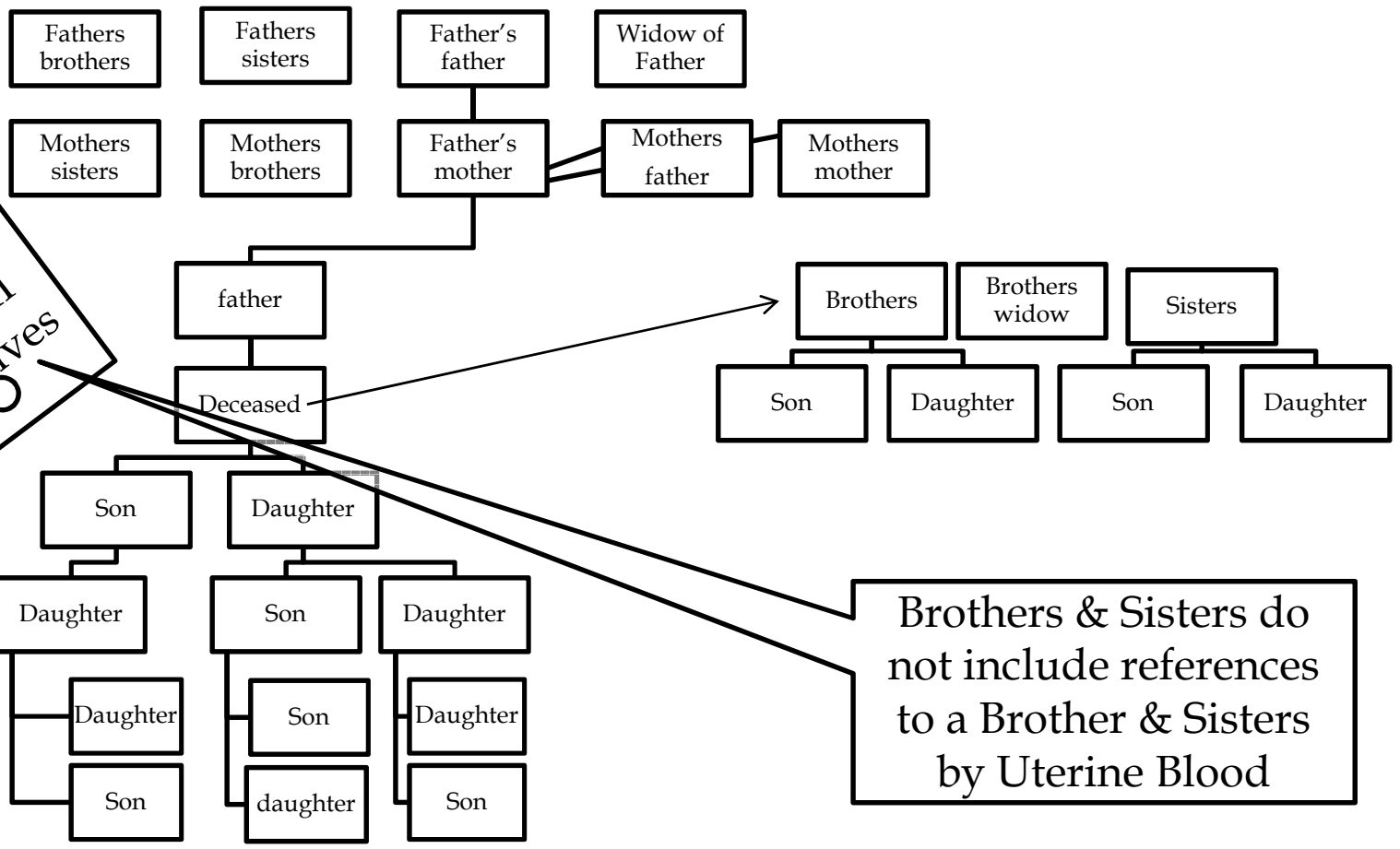


# Partition of HUF.....?





# Partition of HUF.....?





# Partition of HUF.....?

- ▣ If the members agree to an unequal partition,
  - The IT Department cannot challenge validity of such partition.
- ▣ No conveyance is required
  - for effecting a partition even of immovable properties.
  - It may be oral.
  - The factum of partition can be recorded in subsequent memorandum but no registration is required
- ▣ Once a family is assessed as HUF,
  - it would continue to be assessed as HUF even though it is partitioned as per Hindu Law till a finding of partition barring
  - If such an HUF was hitherto not assessed to Tax
  - When the partition took place before 31-12-1978
- ▣ No capital gain shall arise to the HUF on distribution of assets on partition of HUF.



# Partition of HUF.....?

## Judicial Prouncements?

- ▣ If properties admit of physical division, There should be physical division
  - In such a case mere physical division of the income without a physical division of the asset producing the income cannot be treated as a partition
  - If a transaction does not satisfy the above additional conditions, it cannot be treated as a partition under the Act even though under Hindu law there has been a partition, total or partial.
  - The consequence will be that the undivided family will be continued to be assessed as such by reason of section 171(1)
    - ▣ Kalloomal Tapeswari Prasad(HUF) v. CIT [1982] 133 ITR 690 (SC)



# Partition of HUF.....?

- ▣ Where properties (Investments & Monies deposited with bankers) which are capable of division are not actually divided,
  - Partial partition cannot be recognised
    - ▣ CIT v. Venugopal Inani [1999] 239 ITR 514 (SC).
- ▣ Sole surviving coparcener cannot effect any partition
  - Before one can visualise or think of a partition, the property has to be owned by more than one person.
  - Obviously, the sole owner cannot divide the property.
  - The grant of any share in the property by the sole surviving male member of the HUF to the wife or to the mother would be only in the nature of settlement of the property upon them in lieu of their right of maintenance and cannot by any stretch of reasoning be said to be a partition of the property against them
    - ▣ Sat Pal Bansal v. CIT [1986] 162 ITR 582 (Punjab & Haryana).



# Partition of HUF.....?

- ▣ Remainder interest is alone divisible as per rules of partition
  - In the case of death of male member of HUF, the existing character of joint family property is split into two:
    - ▣ One inherited by heirs. Obviously that passes from the ownership of HUF and vests in heirs separately as individuals.
    - ▣ Second is remainder in which members of the family have a share as per the principles of Hindu law to which the persons are subjected.
  - Such remainder interest is divisible as per rules of partition as and when such division is claimed by any such person having right to claim partition –
    - ▣ CIT v. Balubhai Nanubhai (HUF) [1996] **220 ITR 334** (Gujrat)





# Partition of HUF.....?

- ▣ Share allotted to a person who is not entitled to it,
  - It can be no ground for saying that the partition was illegal or void
    - ▣ CIT v. Govind Narain [1975] **101 ITR 602** (Allahabad).
- ▣ Partition is not necessary for Acquisition of Separate Properties
  - It is well-settled proposition applicable to Hindu law that members of the joint family coparcenary can, without disturbing the status of joint family or the coparcenary, acquire separate property or run independent business for themselves.
    - ▣ Ratanchand Darbarilal v. CIT [1985] **155 ITR 720** (SC)
    - ▣ Kshetra Mohan Sannyasi Charan Sadhukhan v. CEPT (1953) **24 ITR 488** (SC).
- ▣ Income of minor from sums received on partition
  - Where Assessee received a sum as minor on partition of his HUF and invested it in a firm, share of profit and interest received by him till his marriage was his individual income and after his marriage it was assessable as HUF income
    - ▣ CIT v. Jitendra Kumar (HUF) [2006] **205 CTR** (Allahabad) 181



# Partition of HUF.....?

- ▣ Partition must be by metes and bounds if female member is allotted a share
  - A partition can take place only between the coparceners though the rights of certain Hindu females who are also members of that HUF have to be taken care of.
  - It is as a part of such taking care of the rights of female members of the HUF that provision is made by giving a share equivalent to that of a son to a mother or wife or unmarried daughters of the family.
  - But there must be a partition by metes and bounds before a wife can get a share equivalent to that of a son from joint family properties.
  - Secondly, such partition by metes and bounds must take place between her husband and her son or sons, as the case may be, or between her sons.
  - A Hindu female has herself no right under Sastric Hindu law to demand a partition by metes and bounds
    - ▣ CIT v. Shantikumar Jagabhai [1976] 105 ITR 795 (Gujrat).



# Partition of HUF.....?

- ▣ Partition between widow-mother and sole surviving coparcener-son is valid
  - The income-tax law and particularly section 171 does not envisage that if members of a HUF are mother and son,
  - such a HUF is debarred in law in effecting complete or partial partition of the HUF assets.
  - The existence of two coparceners is not essential for claiming partition
    - ▣ Ram Narain Paliwal v. CIT [1986] **162 ITR 539** (Punj. & Har.).
- ▣ Properties not capable of physical division can be partitioned through book entries
  - ▣ CIT v. K.G. Ramakrishnier [1963] **49 ITR 608** (Madras).
- ▣ Partition will not be invalid if minor is not represented by natural guardian
  - ▣ Jakka Devayya & Sons v. CIT [1952] **22 ITR 264** (Madras)



# Partition of HUF.....?

- ▣ Group wise division is permissible
  - To effect a partial partition, it is not necessary to define the share of each member of each group.
  - When a property is held by two groups and if the share of each group is well defined, the requirement of partial partition will stand fulfilled
    - ▣ CIT v. Shrawan Kumar Swarup & Sons [1998] **232 ITR 123** (Allahabad)
- ▣ Finding is necessary even in deemed partition
  - Even in cases of deemed partition under section 6 of Hindu Succession Act, 1956,
  - In absence of claim and finding of partition in terms of section 171(1),
  - No part of income of HUF should be excluded from assessment
    - ▣ Addl. CIT v. Maharani Raj Laxmi Devi [1997] **91 Taxman 20** (SC).



# Partition of HUF.....?

- ▣ Hindu family which is assessed as undivided has for the purposes of the Act to be deemed to continue as such
  - Unless there is evidence of partition and a finding is recorded to that effect under the Act in respect of such family.
    - ▣ R.B. Tunki Sah Baidyanath Prasad v. CIT [1995] 212 ITR 632 (SC).
- ▣ The assessing authority can reject the claim for partition only
  - After holding an inquiry as envisaged by the law, and
  - Recording the finding about non-existence of the partition.
  - A finding without the inquiry is no finding in the eye of law
    - ▣ Ramchandra Gopalji Sugandhi v. CIT [1996] 217 ITR 647 (MP)



# Assessment & HUF ?

- ▣ HUF as a separate and distinct tax entity?
  - Section 2(31)
- ▣ Concept of Resident in India?
  - On the basis of Control over the Management on its affairs of the HUF
  - Section 6(2)
- ▣ Payment made to its members by the HUF in case of the partition?
  - Section 10(2) exempted
- ▣ Relief in respect of self occupation House property?
  - Benefit in respect of property used for Business available to HUF?
  - Section 22 & 23
  - In Dayabhaga system, if father does not have the brother as a coparcener, income arising from the ancestral property is taxable in the individual capacity of the father.



# Assessment & HUF.....?

- ▣ Carrying business and Remuneration paid to Karta?
- ▣ Capital Gains and exemption
  - Section 45(1) &
  - 54, 54EC, 54D, 54F, 54G, 54GA,
- ▣ Cost of acquisition of assets vested in HUF for capital gain?
  - Section 49(1)
- ▣ Deductions Under section?
  - 80C,
  - 80D, (Medi claim) 80DD, 80DDB, (Treatment of dependant in disability)
  - 80G, 80GGA, (Scientific Research & Rural development) 80GGC, (Political Parties)
  - 80IA, 80 IB, 80IC, 80ID, 80IE,
  - 80JJA,(Business of Bio degradable waste)
- ▣ Tax Rates for HUF
  - Same as those for the Individual w.e.f. Assessment Year 1997-98



# Assessment & HUF.....?

- ▣ Clubbing of Income
  - Diversion of Individual's income to HUF
    - ▣ Section 64
  - Vesting or blending of self acquired property in Family Hotchpot?
  - Gifts to HUF by its Members or Coparceners?
  - Loans to HUF by its Members
    - ▣ Section 64(2)
  - Funds advanced to coparceners by HUF?
    - ▣ Section 65
  - Inheritance through Gifts or Will :
    - ▣ whether individual or HUF Property?
  - Gift of HUF property by Karta
    - ▣ To wife/other members of the family or to the Strangers?





# Assessment & HUF.....?

- ▣ Prosecution?
  - Karta of the Hindu Undivided Family unless he proves that
  - Offence was committed without his knowledge or
  - He had exercised due diligence to prevent the offence
  - Any member of the family with whose consent or connivance the offence has been committed
- ▣ Service of Notice on HUF
  - Section 282(2)
- ▣ Service of Notice on Disrupted HUF?
  - Section 283(1) Karta or eldest coparcenar
- ▣ Service of Notice after the partial partition?
  - Section 282(2) person controlling the Affairs of the Family or to any manor member of the family.



# Acknowledgements

**Dr. Rakesh Gupta,**

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Thanks a lot

For further clarification please contact on

[admin@mkbhatt.com](mailto:admin@mkbhatt.com)

Visit at [www.mkbhatt.com](http://www.mkbhatt.com)

Or

on Phone Number 09313009193



Dr.M.K.Bhatt